

## CITY OF GRAND JUNCTION, COLORADO

### RESOLUTION NO. 45-21

#### A RESOLUTION PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF CLAUDIA HAZELHURST, JODILYN "JODI" WELCH AND GREG CATON IN CIVIL ACTION NO. 21CV30108 AND APPOINTING A LITIGATION COMMITTEE

##### RECITALS:

A Mesa County District Court action has been filed by the Grand Junction Peace Officers' Association aka Grand Junction Police Officer's FOP Lodge 68 on behalf of its members and on behalf of all others similarly situated alleging that the City and a former and current employees of the City of Grand Junction, Claudia Hazelhurst, Jodilyn Welch and Greg Caton failed in certain duties that Plaintiff alleges they had with an employee health insurance benefit program.

The Plaintiff claims that the City and Hazelhurst, Welch and Caton, who are named in the lawsuit in their "individual and official" capacities have breached a contract, committed theft, breached fiduciary duty, made fraudulent misrepresentations, converted property, violated Colorado Wage Act and unjustly enriched the City.

The Colorado Governmental Immunity Act ("Act") 24-10-101 *et. seq.* C.R.S. primarily covers public entities for actions in tort or that could lie in tort and its provisions also extend to public employees; however, for an action that is a contract claim rather than a tort or a claim which could be a tort governmental immunity may not apply. Furthermore, the Act extends to public employees so long as the conduct that is the subject of the lawsuit was (i) within the performance of their duties, (ii) within the scope of their employment and (iii) not done willfully or wantonly.

As noted, the Act contains an express exception that sovereign immunity of public employees is waived if the acts or omissions of employees working within the scope of their employment are willful and wanton. Under sections 24-10-110 and 24-10-118 C.R.S. of the Act, the City has certain indemnification responsibilities and it may, if it determines by resolution adopted at an open public meeting that it is in the public interest to do so, defend and indemnify public employees against punitive damage claims or pay or settle any punitive damage claim against a public employee.

Because Hazelhurst, Welch and Caton are named individually, the City presumes that the Plaintiff is intending to state punitive damage claims against them and accordingly with this Resolution the City Council acknowledges and provides the defense and indemnification of each person named herein.

Although it is unlikely that punitive damage claims will be sustained, or even survive a motion, against Welch, Caton and former employee Hazelhurst, it is right and proper to adopt this resolution defending them from the personal claims and liability that may arise out or under any claim that is not a tort, is found not to lie in tort or any other claims except any that is found to be willful, wanton or criminal as defined by Colorado law or any violation that was not within each person's scope of employment.

With this Resolution the City Council does establish a Special Litigation Committee (SLC) to which the Council does delegate the authority and power to monitor, report and oversee the application of the Resolution and, together with legal counsel, the conduct of the City's defense against the claims against it, Hazelhurst, Welch and Caton.

In support of the adoption of this Resolution the City Council does hereby consider the following information to be relevant, appropriate and determinative.

#### The Defense of Claudia Hazelhurst

The lawsuit alleges Hazelhurst generally mismanaged the retiree health benefit and specifically that she made misrepresentations. Prior to her retirement she commendably served as the City Human Resources Director and was employed by the City for 44 years. Ms. Hazelhurst was credentialed as a Senior Professional in Human Resources Management and was well versed in employment compensation and benefit matters. The Plaintiff has named her individually in its complaint based on and because of her employment by the City. Without question the claims made against her arose out of and in the scope of her employment. Ms. Hazelhurst denies the allegations made against her and reasonably believes that her conduct was reasonably related to the business or affairs of the City, was reasonable, lawful and in good faith.

The City has no basis to conclude that Ms. Hazelhurst acted willfully and wantonly, even though such claims are easily made even if without merit. She should not have to withstand the claims made against her without protection of the City.

#### The Defense of Jodi Welch

The lawsuit alleges Welch generally mismanaged the retiree health benefit, made misrepresentations and failed to properly account for the benefit. Welch serves the City as its Finance Director since April of 2007. Ms. Welch is an inactive Certified Public Accountant. She has been employed by the City for 29 years. During her years of service, the Government Finance Officers Association (GFOA) has recognized the City 13 times for exceptional financial reporting, in large measure because of her management of the City Finance Department. The Plaintiff has named her individually in its complaint based on and because of her employment by the City. Without question the claims made against her arise out of and in the scope of her employment. Ms. Welch denies the allegations made against her and reasonably believes that her conduct was reasonably related to the business or affairs of the City, was reasonable, lawful and in good faith.

The City has no basis to conclude that Ms. Welch acted willfully and wantonly, even though such claims are easily made even if without merit. She should not have to withstand the claims made against her without protection of the City.

#### The Defense of Greg Caton

The lawsuit alleges Caton generally mismanaged the retiree health benefit and made misrepresentations. Mr. Caton serves the City of Grand Junction as its City Manager.

Mr. Caton is a credentialed city manager and has been employed by the City since June of 2016. Mr. Caton has served in municipal management of four municipalities for over 23 years. He serves as on the GFOA budget review committee and is well experienced in financial matters. The Plaintiff has named him individually in its complaint based on and because of his employment by the City. Without question the claims made against him arise out of and in the scope of his employment. Mr. Caton denies the allegations made against him and reasonably believes that his conduct was reasonably related to the business or affairs of the City, was reasonable, lawful and in good faith.

The City has no basis to conclude that Mr. Caton acted willfully and wantonly, even though such claims are easily made even if without merit. He should not have to withstand the claims made against him without protection of the City.

Because the City Council finds that Ms. Hazelhurst, Ms. Welch and Mr. Caton were acting within the scope of their employment and authority and also because to do otherwise would send a wrong message to the employees of the City, that the City may be unwilling to stand behind them when such employees are being sued for the lawful performance of their duties, the City Council adopts this resolution

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:**

The City Council hereby finds and determines at an open public meeting that based on the Recitals set forth above, which are incorporated by this reference as if fully set forth, it is in the public interest to defend and indemnify Claudia Hazelhurst, Jodilyn (Jodi) Welch fka Jodilyn Romero and Greg Caton (Employees) against claims for damages in accordance with 24-10-110 C.R.S. and/or to pay or to settle any punitive or other damage claims in accordance with 24-10-118 C.R.S. arising out of case 21CV30108.

The City shall pay no judgment or settlement of claim(s) by an Employee(s) where the claim has been compromised or settled without the City's consent.

The City's legal counsel and insurance defense counsel shall serve as counsel to the Employees, unless it credibly determined by such counsel that the interests of the City and the Employee(s) may be adverse. In that event the Employee(s) may select separate counsel to be approved in writing by the City Council. The Employees shall reasonably cooperate with the City in its defense of the claims.

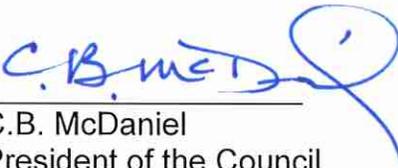
By the adoption of this Resolution the City does not waive any defense of sovereign immunity as to any claim(s) or action(s).

The adoption of this Resolution shall not constitute a waiver by the City of insurance coverage with respect to any claim or liability arising out of or under 2021CV30108 or any matter covered by the Resolution.

The City Council appoints C.B. McDaniel and Rick Taggart as the Special Litigation Committee. The Special Litigation Committee shall serve during the pendency of the lawsuit.

The purpose of this Resolution is to protect the Employees against personal liability for their actions taken on behalf of and in the best interest of the City. The Employees have read and do affirm the foregoing averments. Consequently, it is the intention of the City Council that this Resolution be substantially construed in favor of protection of the Employees together with the responsibility that the Special Litigation Committee monitor, report and oversee the application of the Resolution and, together with legal counsel, the conduct of the City's defense against the claims.

PASSED and ADOPTED this 2<sup>nd</sup> day of June 2021.

  
C.B. McDaniel  
President of the Council

ATTEST:  
  
Wanda Winkelmann  
City Clerk

